Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-63

RICHARD D. COOPER,
Petitioner,

-vs-

STATE TAX COMMISSION OF UTAH,
Respondent.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF UTAH

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THE ATTORNEY GENERAL FOR THE STATE OF UTAH
RESPECTFULLY SUBMITS THE BRIEF IN RESPONSE.

ROBERT B. HANSEN
Attorney General
G. BLAINE DAVIS
Assistant Attorney General
Attorneys for Respondent

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STATEMENT OF JURISDICTION

Respondent respectfully challenges the jurisdiction of this Court to hear the petition here involved. The challenge to jurisdiction is made pursuant to 28 U.S.C. § 1257, which requires that for this Court to grant certiorari the highest court of a State must have issued a final judgment or decree, and further on Rule 19, Rules of the Supreme Court, 28 U.S.C. which states that for this Court to grant certiorari it must be found that the state court decided a federal question of substance in a way not in accord with applicable decisions of this Court. Respondent respectfully submits that where the petitioner failed to procedurally perfect the review of his case by the highest court of the State for failure by the petitioner to follow the proper procedure, then there is not a final judgment or decree *on the merits* of the proceeding and this Court should not then extend its jurisdiction to decide the issues which were not ruled upon by the State Court. It is further respectfully submitted that there is no federal question of substance to be found in the petition here presented that was decided in a manner inconsistent or in contradiction with the applicable decisions of this Court, but on the contrary, all questions were decided in complete compliance with the applicable decisions of this Court.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-63

RICHARD D. COOPER,
Petitioner,

-vs-

STATE TAX COMMISSION OF UTAH,
Respondent.

STATEMENT OF THE CASE

It is necessary to set forth the salient facts of this case because of certain inaccuracies and misleading statements and omissions in the Petition for Writ of Certiorari.

The Petitioner is what may commonly be called a tax protester. He had filed State of Utah Individual Income Tax Returns through calendar year 1970, and he then failed to file Income Tax Returns for 1971 and 1972. In April of 1974 the Petitioner sent a Utah Individual Income Tax Form (TC-40) to the Utah State Tax Commission. On that form there was no financial information whatever. There was absolutely nothing shown for income, expenses, itemized deductions, taxes, or credits. In

response to the questions on occupation and whether any Income Tax was owed for a prior year, the petitioner typed the words: "Object: Self-incrimination." (See Appendix A.)

Enclosed with the petitioner's Form TC 40 was a carbon copy of his U. S. Individual Income Tax Return for 1973, Form 1040, on which he also showed no financial amounts for income, deductions, taxes, or credits, and there were further attached thereto copies of various documents relating to his contentions regarding the unconstitutionality of the tax system, the unconstitutionality of the methods of proceeding and the unconstitutionality of the monetary system of the United States, including statements that he did not have any income because he had not received any gold, silver or silver certificates.

Following receipt of the 1973 Form TC 40 without any information, the Auditing Division of the Utah State Tax Commission performed an audit and attempted to receive information regarding the income, expenses and deductions of the petitioner for the periods 1971, 1972 and 1973. Notwithstanding continued requests, the petitioner continued to refuse to provide any information or to file a return on which he reported his income, expenses and deductions in accordance with the taxing laws of the State of Utah. Thereafter, in accordance with Utah law, the Auditing Division of the Utah State Tax Commission made an estimate of the taxable income of the petition and sent him notice of that determination. Said estimate was made in accordance with Section 59-14A-52, Utah Code Annotated 1953, as amended, which provides as follows:

"(a) If any person shall fail to make a return required by this act or by regulations prescribed hereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Tax Commission may prepare such return, which, being signed by such person, may be received by the Tax Commission as the return of such person.

(b) (1) If any person fails to make and file any return required by this act at the time prescribed therefor, or makes, wilfully or otherwise, a false or fraudulent return the Tax Commission shall make such return from its own knowledge and from such information as it can obtain through testimony or otherwise.

(2) Any return so made and subscribed by the Tax Commission shall be prima facie good and sufficient for all legal purposes."

Following the estimate of taxable income by the Auditing Division, the petitioner then filed an amended return, which was similar in nature to the original return which he filed, and again, no financial information was given except for a statement of the Federal exemptions and the food sales tax credit, and the words "object: self-incrimination" were inserted six different times on the form. (See Appendix B.)

The Auditing Division of the Utah State Tax Commission continued to correspond and meet with the petitioner to attempt to get him to provide the necessary financial information to prepare the return, and the petitioner continued to press his beliefs, and when it all proved to be of no avail to either side, the petitioner re-

quested a hearing before the Tax Commission, after which the petitioner was given first an informal hearing, which is an informal conference meeting with the Tax Commissioners, and was later given a formal hearing before the Utah State Tax Commission, was given an opportunity to be represented by counsel, and to present any evidence. At that hearing, the defendant did not present any testimony or evidence of his own, was not sworn, and did not testify. The only matters presented at that hearing were by the Auditing Division of the State Tax Commission, and the cross-examination of those employees of the Auditing Division. The petitioner also called the employees of the Auditing Division of the Utah State Tax Commission in his own behalf, but they did not give testimony regarding the financial aspects of the petitioner's income, expenses, or deductions.

At the time the estimate was made of the petitioner's income, because of the petitioners refusal to cooperate, the Auditing Division did not have specific financial information available on which to estimate the taxable income of the petitioner, or on which to base the amount of tax which was assessed to the petitioner. However, after the assessment was made, but prior to hearing, the Utah State Tax Commission did obtain information that the petitioner was operating two wash and dry cleaners (Laundromats) within the State of Utah, was the proprietor of the American Opinion Bookstore, and operated approximately 15 residential rental units within the State of Utah. The title to most of those properties was in the name of the petitioner.

When the petitioner's income was estimated, an at-

tempt was made to estimate a reasonable income, and he was estimated to have $11,500.00 of taxable income, and an assessment was made of $724.88 tax, $181.22 penalties and $29.24 interest, for a total assessment of $935.34 for 1973. Further, at the time of the hearing, there was a question regarding 1971 and 1972 returns, but the years 1971 and 1972 are no longer in contention.

Right up until the time of the hearing, and even during the hearing, efforts were made to convince the petitioner that he should file a return in which he reported the financial transactions which he had during the year 1973, even if such a filing would result in a lower tax than had been assessed by the Utah State Tax Commission, or no tax at all, and this may be shown by the following excerpts from the transcript of that hearing.

On page 18, line 14, of the transcript, Mr. Elburn W. Kenison, an auditor for the State Tax Commission, made the statement, "In each case, we indicate that if proper information is submitted, a recomputation of tax will be made."

On page 33, line 4, Mr. Paul M. Holt, who was the supervisor of the Auditing Division of the Utah State Tax Commission, made the statement, "The only anwser I can add to that is still file your own return."

On page 34, line 22, Mr. Cooper asked Mr. Holt if he would like to add anything to that answer, and Mr. Holt's response was, "Other than to file your own return."

On page 44 of the transcript, the following questions were asked by Mr. Deamer, an Assistant Attorney Gen-

eral, and the answers were given again by Mr. Paul M. Holt.

"Q. Did you ever request Mr. Cooper to file proper income tax returns and pay the tax due and owing?"

A. Yes, that request is made on this Form TC-302 when it goes out.

Q. Did you ever request orally to his face?

A. Yes.

Q. How many times would you say you requested (him) to file returns?

A. When he was in the office. I emphasized it time and time again.

Q. Did you ever request Mr. Cooper to supply information regarding his income, dependents and books and records?

A. Yes."

Again on Page 35 of the transcript, Mr. Cooper was asking Mr. Kenison question, and the following is what transpired:

"Q. Mr. Kennison, you made a statement to this Commission that you have reviewed the sales tax records of Mr. Cooper and that based on his laundry sales, his bookstore sales, you found that perhaps your estimate was low and should be raised; and you substantiated that supposition on the fact that you had seen his forms. And we want this Commission—this Commission wants to know more about the basis of that expression that you have made.

A. In my estimating the tax, the reason for this is to get you to file a return. If there is something we could do to entice you to file your proper return, that was my idea of suggesting that it should have been raised. Maybe when you file your proper return, you will come up with no tax liabilities; but we would like a return from you."

On page 4 of volume 2, which is the afternoon session of the hearing, Mr. Deamer asked the following questions to Mr. Kenison:

"Q. Have you ever requested that Mr. Cooper supply you with information regarding his income tax for '71, '72, and '73?

A. On numerous occasions. We have written him letters telling him that was all that was necessary, and to give us that information and we would recompute the taxes with it, or he could file a return.

Q. And you would have changed the estimate that you had made as soon as he would have supplied any information?

A. Just as soon as he would have given that information.

Q. Has he supplied any information at all?

A. No.

Q. Has he permitted you to examine the books, records, invoices or other documents?

A. No.

Q. Did you request Mr. Cooper to file a

proper income tax return for 1971, 1972 and 1973?

A. I'm sure we did. In most cases that's the first procedure, is writing a letter requesting returns for those years that we can't find returns for.

Q. Has he filed proper income tax returns for 1971, '72, '73?

A. No.

Q. And what is the reason why they are improper?

A. They are under protest. No figures.

Q. No figures are shown on the faces?

A. No figures are shown on the returns."

Following the conclusion of the hearing, the Utah State Tax Commission issued decision No. 303, dated Jan. 10, 1977, wherein they affirmed the taxes due for the year 1973 in the amount of $724.88, plus penalties of $181.22, plus interest on the unpaid taxes from the date the taxes were due and owing at the rate of 6 percent per annum until paid, and the Commission further assessed a penalty in accordance with Utah law in the amount of $1,000.00 for his intent to evade taxes. The Commission's decision and findings and conclusions may be found in Appendix C.

Throughout the proceeding, Mr. Cooper represented himself, pro se, even though he had been counseled at the first of the proceeding by Mr. Michael Deamer, an Assistant Attorney General, that he was entitled to be represented by legal counsel, and further recommended that Mr. Cooper obtain legal counsel, but Mr. Cooper waived that right and privilege. Further, at the end of the hearing, the last matters in the transcript are statements by Mr. Deamer advising Mr. Cooper of the procedure for an appeal if one should be necessary, which is set forth as follows:

> "Mr. Deamer: Mr. Chairman, I think it would be proper for me to outline a procedure from this point on. Mr. Cooper, I wish to advise you that the Tax Commission will consider the entire matter that's been presented today and the exhibits and records and the testimony. They will render a decision. It will be a written decision. It will also include findings of fact and conclusions of law, and you will be mailed a copy of these documents. If the decision is adverse to your proposition, pursuant to Utah Code Annotated, Section 59-14(A)-7, within 30 days after mailing to the taxpayer of notice of determination by the Tax Commission, pursuant to Section 59-14(A)-73 any party affected thereby may apply to the Supreme Court of the State of Utah for a writ of certiorari, or review for the purpose of having the lawfulness of a decision inquired into and determined. You have then thirty days after the decision is mailed out to you in which to apply to the Supreme Court of the State of Utah for a review. They make a review on the law and the facts. However, no additional facts may be presented at that time. After you petition, and you must file a petition for review, they will issue a writ of review and you therefore have 30 days in which to prepare

brief setting forth the legal points and authorities supporting your position, and arguing your position in any manner which you wish to argue.

"After you file your brief and send the attorneys for the Tax Commission a copy, we'll file a responsive brief to that document.

"Utah law also requires in Section 59-14A-7 that as a condition precedent to review, that before making application to the Supreme Court for Writ of Review, the full amount of the taxes, interest and other charges stated in the determination or the decision of the Tax Commission must be deposited with the Tax Commission, and an undertaking by the applicant with the Tax Commission of such amount and with such sureties as the Tax Commission to the effect that decision of the Tax Commission is affirmed, applicant will pay all costs and charges which may accrue against him in the prosecution of the application. This must be in a sum sufficient to cover the taxes, interest and other charges specified in such decision, plus the costs and charges which may accrue against the applicant in the prosecution of the application. *This is a condition precedent to review under Utah law, over which we have no control or authority, and basically that is the procedure that will be followed from this time.*

"Mr. Cooper: *Thank you. I'm familiar with that, so I appreciate that.*" (Emphasis added)

As can be clearly seen from the above portion of the transcript, Cooper was clearly told of the time limitations, the procedure to follow, and the necessity of depositing

with the Court the amount of taxes, interest and other charges, and he stated that he was already familiar with those requirements.

Twenty-nine days after the decision of the Tax Commission, the petitioner filed a notice of appeal with the Utah Supreme Court, even though a taxpayer does not have a right of appeal to the Utah Supreme Court, and it had been explained to him that it would be necessary to file a petition for a writ of certiorari or a petition for writ of review. Thereafter, after notice from the Utah Attorney General's office, that a notice of appeal was improper, and after the 30-day period had run, the petitioner filed a petition for writ of certiorari along with a memorandum, and the following day, the Utah Supreme Court issued a writ of review. At no time, up to and including the present time, has the petitioner ever deposited with the Court or the Tax Commission the amount of taxes, penalty, and interest which had been assessed, or any portion of it, nor posted any security, as required by Section 59-14A-77, Utah Code Annotated, 1953, as amended which provides as follows:

"Before, making application to the Supreme Court for a writ of review, the full amount of the taxes, interest and other charges stated in the determination or decision of the Tax Commission, must be deposited with the Tax Commission, and an undertaking filed by the applicant with the Tax Commission in such amount and with such sureties as the Tax Commission shall approve, to the effect that if such application is dismissed or the decision of the Tax Commission affirmed, the applicant will pay all costs

and charges which may accrue against him in the prosecution of the application. Or, at the election of the applicant, such undertaking may be in a sum sufficient to cover the taxes, interest and other charges, stated in such decision, plus the costs and charges which may accrue against the applicant in the prosecution of the application. In such event applicant shall not be required to pay such taxes, interest or other charges as a condition precedent to his application."

Because of the above, the Utah Attorney General's office, for and on behalf of the Utah State Tax Commission, filed a Motion to Dismiss with the Utah Supreme Court on the basis that the Petition for Writ of Review was not timely under Utah law, and further, on the basis that the petitioner had not deposited the funds as required by Utah law, nor had he posted any sureties.

The Motion to Dismiss the appeal was heard by the Utah Supreme Court, and was granted summarily without the Utah Supreme Court ever deciding the issues which petitioner desires to raise now in this Court, and without stating whether it was granting the Motion to Dismiss for one reason or the other, and the author of this brief believes, and assumes, that the Utah Supreme Court granted said motion for both reasons, and would have granted said motion for either independent reason.

QUESTIONS PRESENTED

The petitioner sets forth the questions which he feels are presented, but it is submitted that a careful reading

of those alleged questions presented would in fact indicate that the question is as follows:

> "May the State of Utah make estimates of tax and impose civil penalties when a taxpayer intentionally refuses to file a return, and continues to refuse to provide any financial information, and if so, may the State of Utah require that the taxes, penalties and interest must be prepaid, and other procedural steps properly taken, before the taxpayer may have his case heard by the Utah Supreme Court?"

REASONS FOR DENYING THE WRIT

ARGUMENT

POINT I

THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION WHERE THE STATE COURT HAS NOT ISSUED A FINAL JUDGMENT OR DECREE ON THE MERITS OF THE FEDERAL MATTERS INVOLVED, AND WHERE THERE ARE ADEQUATE STATE GROUNDS FOR THE STATE COURT DECISION.

28 U.S.C. Section 1257 requires that before this Court can grant certiorari, the highest court of a state must have issued a final judgment or decree, and the cases have interpreted that to mean a decree on the fed-

eral questions involved which were plainly and properly raised in the state court.

The Utah State Supreme Court has never ruled on the issues which the petitioner attempts to raise in his Petition for Writ of Certiorari, because he failed to follow the proper procedures to perfect his case and have those issues heard by the Utah Supreme Court. As has been stated in the Statement of Facts, the Utah Supreme Court granted the Motion to Dismiss of the State Tax Commission, which motion was made on the grounds that the petitioner had failed to post adequate security as was required by statute, and further on the grounds that the petitions were not timely filed with the Utah Supreme Court, and therefore, it lacked jurisdiction. The Utah Supreme Court did not set forth which of those two reasons caused it to grant the Motion to Dismiss, or whether it was granting the Motion to Dismiss on both reasons. Nevertheless, the record is clear that the petitioner in this proceeding failed to properly preserve his case for review by the Utah Supreme Court. It is submitted that either reason alone is an adequate state ground. Therefore, there has been no ruling to constitute a final decree or a final judgment on the federal issues from the state court, and this Court does not, therefore, have jurisdiction and should not grant the petition for writ of certiorari.

This is line with a ruling from this Court in the case of *Herndon v. Georgia*, 295 U. S. 441, 55 S. Ct. 794, 79 L. Ed. 1530 (1935), wherein this court said:

> "But, in addition to the insufficiency of the specification, the adverse action of the trial court

> was *not preserved* by exceptions *pendente lite* or assigned as error in due time in the bill of exceptions, *as the settled rules of the state practice require.* In that situation, the state Supreme Court declined to review any of the rulings of the trial court in respect of that and other preliminary issues; *and this determination of the state court is conclusive here.*" (Emphasis added)

As in that case, the petitioner in this proceedings has failed to preserve his exceptions to the action of the Tax Commission as the settled rules of the State of Utah require, and therefore, the Court does not have jurisdiction.

In addition, Rule 19 of the Rules of the Supreme Court, 28 U.S.C., state that for the Court to grant certiorari, it must be found that the state court decided a federal question of substance in a way not in accord with applicable decisions of this Court. It is respectfully submitted that every issue determined by the Tax Commission was clearly in accordance with rulings of this Court and of each of the Circuit Courts which have ruled on similar issues, as will be set forth below, and therefore, this is not a proper case for this Court to grant certiorari.

POINT II.

THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION DOES NOT ELIMINATE THE REQUIREMENT THAT A RECIPIENT OF INCOME MUST FILE A RETURN ON WHICH INCOME, EXPENSES, AND

DEDUCTIONS ARE STATED AND TAXES ARE COMPUTED.

The petitioner in this proceeding was required by the statutes of the State of Utah to file an income tax return and report thereon his income, expenses and deductions and other pertinent financial figures, but he wilfully and intentionally failed to meet that requirement. This Court long ago decided in *United States v. Sullivan*, 274 U. S. 259, 263, 47 S. Ct. 607, 71 L. Ed. 1037 (1927), that the Fifth Amendment of the United States Constitution would not prevent a taxpayer from being required to file a tax return and report the necessary financial information. The holding of this Court in the Sullivan case has been consistently followed and enlarged by the United States Circuit Courts and every court which has ruled upon the issue since that time. In *United States v. Daly*, (8 Cir., 1973,) 481 F. 2d 28, 30, the Eighth Circuit Court of Appeals cited *Heligman v. United States*, 407 F. 2d 448, 450 (8th Cir. 1969) citing *Daly v. United States*, 393 F. 2d 873 (8th Cir. 1968). The Court stated as follows:

> In Heligman v. United States, supra, this court stated:
>
> "[T]he taxpayer is not the final arbiter of the privilege. The privilege must be specifically claimed *on a particular question* and the subject matter submitted to the court for its determination as to the validity of the claim.
>
> "The defendant here, however, claims a blanket privilege against the mere making or filing of the return.

* * * * *

> "The public need for requiring voluntary disclosures of income transcends any personal right to thwart national objectives by allowing an undisclosed self-determination of possible incrimination, thus excusing compliance with the income tax laws. *We, therefore, hold that the Fifth Amendment privilege against incrimination does not extend to defendant's failure to file. . .*" 407 F. 2d 450-451, 452 (emphasis added). See also *California v. Byers*, 402 U. S. 424, 91 S. Ct. 1535, 29 L. Ed.2d 9 (1971): *United States v. MacLeod*, 436 F. 2d 947 (8th Cir. 1971).
>
> "Defendant has made no reasonable showing with respect to how the disclosure of the amount of legal fees he received during the years in question, as shown by the stipulation made at the trial, could possibly incriminate him."

See also *United States v. Jordan*, 508 F. 2d 750, (7th Cir. 1975).

Therefore, it is respectfully submitted that the Fifth Amendment of the United States Constitution does not entitle the petitioner in this proceeding to refuse to provide any information with regard to his income, expenses, and deductions.

POINT III.

THE FORMS FILED BY THE PETITIONER DID NOT CONSTITUTE A TAX RETURN.

The courts have consistently held that when a taxpayer places his name on a form, signs the form, and refuses to provide any financial information, that such a taxpayer has not filed a tax return as is required by law.

One of the most recent cases to so hold is *United States v. Porth*, 426 F. 2d 519, (10th Cir. 1970), in which circuit Judge Pickett, speaking for the 10th Circuit Court of Appeals, said:

> ". . . the proof shows he did file a return containing only his name and reference to various constitutional provisions which he says excused him from filing a return. The return filed was completely devoid of information concerning his income as required by the regulations of the IRS. A taxpayer's return which does not contain any information relating to the taxpayer's income from which the tax can be computed is not a return within the meaning of the Internal Revenue Code or the regulations adopted by the Commissioner. 10 Mertens, the Law of Federal Income Taxation, § 55.22 (1964 Revision); Florsheim Bros. Dry Goods Co. v. United States, 280 U.S. 453, 462, 50 S. Ct. 215, 74 L. Ed. 542 (1930); Sanders v. Commissioner of Internal Revenue, 225 F. 2d 629 (10th Cir. 1955), cert. denied, 350 U.S. 967, 76 S. Ct. 435, 100 L. Ed. 839 (1956); National Contracting Co. v. Commissioner of Int. Rev., 105 F. 2d 488 (8th Cir. 1939).

The Utah State Tax Commission follows a similar practice, and when a person does not give any information, the Utah State Tax Commission position is that a return has not been filed within the meaning of the law. It is respectfully submitted that such a determination is clearly within the law and is consistent with the holdings of the Federal judiciary in interpreting any constitutional questions which have been raised.

POINT IV.

THE PETITIONER DID HAVE INCOME EVEN THOUGH IT WAS NOT RECEIVED IN GOLD, SILVER, OR SILVER CERTIFICATES.

While a portion of the petitioner's objections to the income tax laws is that his income is not received in gold, silver or silver certificates, the courts have unanimously rejected that contention.

The petitioner's contention regarding the monetary system of the United States has been clearly rejected in *Hartman v. Switzer*, 376 F. Supp. 486 (U.S.D.C. Penn. 1974), *United States v. Gardiner*, 531 F. 2d 953 (9 Cir. 1976, and *United States v. Wangrud*, 533 F. 2d 495 (9 Cir. 1976).

While it is admitted that the Tax Commission did not know the sources of income of the petitioner at the time the assessment was made, they were fairly confident that with 10 children to support, he did have sufficient income to require filing, and they estimated that he had

$11,500.00 of taxable income for 1973, and they imposed taxes thereon. Such an amount is clearly not an unreasonable or excessive amount for a person who refuses to provide any information. Further, by the time of the hearing, the Auditing Division had determined that the petitioner did have two laundromats, one bookstore, and approximately 15 residential rental units within the State of Utah, all of which would have clearly required the filing of a return by the petitioner.

Therefore, it is respectfully submitted that the petitioner did have income even though it was not received in gold, silver or silver certificates.

POINT V.

THE STATE OF UTAH MAY LAWFULLY MAKE ESTIMATES OF THE TAXABLE INCOME AND THE TAX THEREON, AND MAY IMPOSE CIVIL PENALTIES FOR WILLFUL FAILURE TO FILE A TAX RETURN.

When a recalcitrant taxpayer refuses to provide information to a state, one of the few alternatives available to the state is to make some type of reasonable estimate of the taxpayer's income and the tax thereon, and to assess that tax to the taxpayer. Such a procedure is clearly not unreasonable, arbitrary or capricious so long as the

state gives the taxpayer the right to provide correct information to the state and to only pay the taxes thereon.

Such a procedure has been upheld by the Supreme Court of Alabama in the case of *Radue v. Bradshaw*, 268 So. 2d 760. In that case, the Alabama Supreme Court upheld a similar type process to that which has been invoked in Utah and the court specifically stated that the taxing authority "was not obligated to set out specifically what information it considered in making the final assessment in order to comply with the provisions of (the law)."

Further, the Utah Supreme Court in the case of *State Tax Commission of Utah v. Hoopes*, 30 U. 2d 107, 514 P. 2d 221, upheld the Utah assessing procedure as constitutional, and as further providing due process to the taxpayers.

Therefore, it is respectfully submitted that the Utah law is constitutional, provides due process, and that under such law the state may lawfully make estimates of the taxable income and the taxes thereon and may further impose civil penalties for willful failure to file.

CONCLUSION

It is respectfully submitted that this case is merely a recalcitrant taxpayer who is groping for straws in trying to avoid the lawful payment of his taxes, and that while the taxpayers actions may be well-intentioned, they are nevertheless based upon a completely false notion of the law and the Constitution of the United States, and for this Court to grant certiorari in this proceeding would

encourage this new breed of lawlessness and cause a growth in this already spreading cancerous type of conduct on the part of taxpayers, and the petitioner's petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-63

RICHARD D. COOPER,
Petitioner,

-vs-

STATE TAX COMMISSION OF UTAH,
Respondent.

CERTIFICATE OF SERVICE

Pursuant to Rule 33 of the United States Supreme Court Rules, 28 U.S.C., Counsel for Respondent certifies that copies of the Respondent's Brief in Opposition have been served by mail on Richard D. Cooper, 345 South Main Street, St. George, Utah 84770, this 2nd day of December, 1977.

G. BLAINE DAVIS
Assistant Attorney General

Attorney for Respondent

236 State Capitol
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APPENDIX A

1973
STATE OF UTAH
INDIVIDUAL
INCOME TAX RETURN

RESIDENT
For the Year ending December 31, 1973 or other Taxable Year
Beginning _____ 19____, Ending _____ 19____

Form TC-40
Returns are due and tax payable on or before April 15, 1974. (Fiscal year returns 15th day of 4th month after end of fiscal year.)

Amount of Refund
$ _____
Approved By
_____

Please print or type

First name and initial (if joint return, use first names and middle initials of both)	Last name	Your social security number
Richard D. Cooper	Cooper	361 22 6854
Present home address (Number and street, including apartment number, or rural route)		Wife's number, if joint return
345 South Main Street		
City, town or post office, State and ZIP code	Occupation	Your Object: Self-incrimination
St.George, Utah 84770		Wife's

1. Exemptions—Total number of exemptions claimed on your 1973 Federal Income Tax return 10
2. Your Filing Status—check only one:
   ☐ Single, including head of household & widow(er) ☐ Married filing jointly ☒ Married filing separately; name of spouse Aleen

- If you filed your Federal return on Form 1040, you must attach a complete copy; but if you used Short Form 1040A, a copy need not be attached.
- If you used Federal Tax Tables, start on line 3. ●
- If you did not use Federal Tax Tables, start on line 7. ▶
- If you claim credit for income tax paid to another state, complete Schedule A (on reverse).

3. Federal adjusted gross income (line 15, Federal Form 1040 or line 12, Federal Form 1040A) ●			3
Find your tax from the Utah Tax Tables and enter on line 17 (omitting lines 4 through 16) OR continue if additions or subtractions other than federal tax are needed (see General Instructions 14 through 18)			
4. Federal standard deduction (see General Instruction 22)	4		
5. Federal exemptions (multiply the number of exemptions on line 1 by $750)	5		
6. Total (add lines 4 and 5)			6
7. Federal taxable income (line 3 less line 6, or line 48, Federal Form 1040 or line 16, Federal Form 1040A) ▶			7
8. Add State income tax (if any) deducted on Federal return (see General Instruction 14)			8
9. Other additions (Equitable adjustments attach Schedule) (see General Instruction 18)			9
10. Total (add lines 7, 8, and 9)			10
11. Federal income tax determined for same period (see General Instruction 15)	11		
12. Interest income from U.S. Govt. obligations included in Federal return (see Gen. Instr. 16)	12	none	
13. Retirement income included on Federal return (limited see General Instruction 17)	13	none	
14. Other subtractions (Equitable adjustments attach Schedule) (See General Instruction 18)	14		
15. Total subtractions (add lines 11, 12, 13, and 14)			15
16. Utah taxable income (line 10 less line 15)			16
17. Utah income tax determined from (check one) ☐ Utah Tax Tables, or ☐ Utah Tax Rate Schedules			17
18. Credit for Utah income tax withheld (attach withholding forms)	18	none	
19. Credit for income taxes paid to another state (From Schedule A on reverse)	19	none	
20. Food sales tax credit-Number of exemptions less those for age and blindness X $6.00	20		
21. Total credits (add lines 18, 19, and 20)			21
22. If line 17 is larger than line 21, enter BALANCE DUE. Pay in full with return.			22
23. If line 21 is larger than line 17, enter overpayment TO BE REFUNDED TO YOU.			23

RECEIVED
UTAH STATE TAX COMMISSION
APR 12 1974
Released By I

Do you owe any Utah income tax for a prior year? Yes ☐ No ☐
If yes, which year(s)? Object: Self-incrimination

Send return and make remittances payable to: UTAH STATE TAX COMMISSION, State Office Bldg., Salt Lake City, Utah 84134

Sign here — Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

▶ Your signature: Richard D. Cooper — Date
▶ Wife's (husband's) signature (if filing jointly, BOTH must sign even if only one had income) — Date
▶ Preparer's signature (other than taxpayer) — Date
Address (and ZIP Code) — Preparer's Emp. Ident. or Soc. Sec. No.

APPENDIX B

Amended Ext 3/5/75 TA

1973 AMENDED TO APRIL 12, 1974 FILING OF RECORD FOR YEAR 1973
STATE OF UTAH
INDIVIDUAL
INCOME TAX RETURN

RESIDENT
For the Year ending December 31, 1973 or other Taxable Year
Beginning _____ 19____, Ending _____ 19____

Form TC-40
Returns are due and tax payable on or before April 15, 1974 (if not your returns 15th day of 4th month after end of fiscal year.)

Amount of Refund
_____
Approved By
_____

Please print or type

First name and initial (if joint return, use first names and middle initials of both)	Last name	Your social security number
Richard D.	Cooper	361 22 6854
Present home address (Number and street, including apartment number, or rural route)		Wife's number, if joint return
345 South Main Street		
City, town or post office, State and ZIP code	Occupation	Your Object: Self-incrimination
St. George, Utah 84770		Wife's

Exemptions—Total number of exemptions claimed on your 1973 Federal Income Tax return 10
Your Filing Status—check only one:
☐ Single, including head of household & widow(er) ☐ Married filing jointly ☒ Married filing separately; name of spouse Aleen

If you filed your Federal return on Form 1040, you must attach a complete copy; but if you used Short Form 1040A, a copy need not be attached.
If you used Federal Tax Tables, start on line 3. ●
If you did not use Federal Tax Tables, start on line 7. ▶
If you claim credit for income tax paid to another state, complete Schedule A (on reverse).

Federal adjusted gross income (line 15, Federal Form 1040 or line 12, Federal Form 1040A) Object: Self-incrimination ●			3
Find your tax from the Utah Tax Tables and enter on line 17 (omitting lines 4 through 16) OR continue if additions or subtractions other than federal tax are needed (see General Instructions 14 through 18)			
Federal standard deduction (see General Instruction 22)	4		
Federal exemptions (multiply the number of exemptions on line 1 by $750)	5	7,500.00	
Total (add lines 4 and 5)			6
Federal taxable income (line 3 less line 6, or line 48, Federal Form 1040 or line 16, Federal Form 1040A) Object: Self-incrimination ▶			7
Add State income tax (if any) deducted on Federal return (see General Instruction 14)			8
Other additions (Equitable adjustments attach Schedule) (see General Instruction 18)			9
Total (add lines 7, 8, and 9)			10
Federal income tax determined for same period (see General Instruction 15) Object: Self-incrimination	11		
Interest income from U.S. Govt. obligations included in Federal return (see Gen. Instr. 16)	12	none	
Retirement income included on Federal return (limited see General Instruction 17)	13	none	
Other subtractions (Equitable adjustments attach Schedule) (See General Instruction 18)	14		
Total subtractions (add lines 11, 12, 13, and 14)			15
Utah taxable income (line 10 less line 15) Object: Self-incrimination			16
Utah income tax determined from (check one) ☐ Utah Tax Tables, or ☐ Utah Tax Rate Schedules			17
Credit for Utah income tax withheld (attach withholding forms)	18	none	
Credit for income taxes paid to another state (From Schedule A on reverse)	19	none	
Food sales tax credit-Number of exemptions less those for age and blindness X $6.00	20	60.00	
Total credits (add lines 18, 19, and 20)			21
If line 17 is larger than line 21, enter BALANCE DUE. Pay in full with return.			22
If line 21 is larger than line 17, enter overpayment TO BE REFUNDED TO YOU.			23

Object: Self-incrimination

Do you owe any Utah income tax for a prior year? Yes ☐ No ☐
If yes, which year(s)? _____

Send return and make remittances payable to: UTAH STATE TAX COMMISSION, State Office Bldg., Salt Lake City, Utah 84134

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

▶ Your signature: Richard D. Cooper — Date
▶ Preparer's signature (other than taxpayer) — Date

BEST COPY AVAILABLE

APPENDIX C

BEFORE THE UTAH STATE TAX COMMISSION

UTAH STATE TAX COMMISSION	)	
-v-	:	DECISION
RICHARD D. COOPER.	)	
	:	383
	)	

The matter of the Petition for Redetermination of the deficiency of Richard D. Cooper of 345 South Main, St. George, Utah, came on regularly for hearing before the Utah State Tax Commission, and Richard D. Cooper appearing on behalf of himself, and Michael L. Deamer, Assistant Attorney General appearing on behalf of the Utah State Tax Commission, and the Findings of Fact and Conclusions of Law having been signed and entered herewith, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that said Richard D. Cooper of St. George, Utah, who with intent to evade taxes and the lawful requirements of the Utah State Tax Commission in violation of Chapter 14A of Title 59, U.C.A. (1953), has failed to make and render a return, to supply information, and to pay taxes for the taxable year 1973, and, as such is hereby assessed and fined a civil penalty of $1,000.00 in addition to taxes estimated to be in the amount of $724.88, plus penalties of $181.22, plus interest on the unpaid taxes from the date said taxes were due and owing at six percent per annum until paid. Mr. Richard D. Cooper is hereby ordered to pay the same forthwith.

Dated this 16th day of January, 1977.

UTAH STATE TAX COMMISSION

BEFORE THE UTAH STATE TAX COMMISSION

UTAH STATE TAX COMMISSION	)	
	:	
- v -	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
	:	
RICHARD D. COOPER.	)	
	:	
	)	

The matter of the Petition for Redetermination of the deficiency of Richard D. Cooper of 345 South Main, St. George, Utah, for the taxable year 1973, regarding income taxes, came on regularly for hearing before the Utah State Tax Commission on the 5th day of August, 1975, at the offices of the Utah State Tax Commission, 200 State Office Building, Salt Lake City, Utah, and Commissioners Vernon L. Holman, Eleanor Lee Brennan, and Paul T. Fordham, sitting as the Utah State Tax Commission, and Michael L. Deamer, Assistant Attorney General, appearing on behalf of the staff of the Utah State Tax Commission and the Utah State Tax Commission, and Richard D. Cooper, appearing on behalf of himself, and testimony and exhibits having been presented to the Tax Commission, and the Tax Commission having considered the matter, now enters its

FINDINGS OF FACT

1. Richard D. Cooper, petitioner herein, of 345 South Main, St. George, Utah, filed State Income Tax Form TC-40 for the year 1973, with his signature and claiming 10 exemptions but refused to include and did not include any figures setting forth gross income, allowable deductions, taxable income, or taxes due and owing.

2. Based on said insufficient tax return, the staff of the Utah State Tax Commission estimated the taxes, penalties, and interest for 1973 in the amount of $935.34.

3. The auditing staff of the Utah State Tax Commission requested orally and in writing on numerous occasions, including at the hearing herein, that petitioner file a return setting forth gross income, allowable deductions, taxable income and taxes due and owing for the taxable year 1973, and to supply information, books and records regarding income and dependents, all of which Mr. Cooper has refused and continues to refuse to do.

4. Based on sales tax returns for the taxable year 1971, it was shown that Mr. Cooper owned and operated a wash-and-dry center business and a bookstore in St. George, Utah.

5. That a subsequent investigation at the request of the State Tax Commission by the auditing staff disclosed that Mr. Cooper owns numerous rental units in the Orem-Provo area in addition to the laundromat and bookstore in St. George, indicating that, in fact, petitioner had gross income and taxable income for the period in question which he refuses to report.

6. Pursuant to its authority, the Utah State Tax Commission estimates that petitioner's gross income for the year 1973 was $21,208.00 and that Mr. Cooper owes taxes on said income in the amount of $724.88, plus interest and penalties.

7. That petitioner is a member of a local tax protest movement, and he intentionally and with total disregard for the law has failed to "make and render" a return, supply information to the State Tax Commission when requested, and has failed to pay the taxes, penalties and interest due and owing.

8. That petitioner acted with fraudulent intent to evade payment of taxes.

9. That petitioner is liable to the State of Utah in the amount of $724.88, plus a penalty of $181.22, plus interest from the date said return was due at six percent per annum until paid.

CONCLUSIONS OF LAW

1. Petitioner with intent to evade taxes and the requirements of Title 59, Chapter 14A, U.C.A. (1953), failed to "make and render" a tax return for the taxable year 1973 in violation of U.C.A., Section 59-14A-92(b).

2. Petitioner with intent to evade taxes and the requirements of Title 59, Chapter 14A, U.C.A. (1953) has failed to supply information within the time required and as requested in violation of U.C.A., Section 59-14A-92(b).

3. Petitioner with intent to evade taxes and the requirements of Title 59, Chapter 14A, U.C.A. (1953) failed to pay the income taxes due and owing for the year 1973 in violation of U.C.A., Section 59-14A-92(b).

4. That said petitioner is liable for a penalty of $1000.00, pursuant to U.C.A., Section 59-14A-92(b), in addition to any and all other criminal penalties that may be imposed for evasion of the payment of taxes and failure to meet other requirements of Utah law, pursuant to U.C.A., Section 59-14A-92.

5. That said petitioner is liable for the total taxes and civil penalties set forth above in the Findings of Fact in the amount of $906.10, plus interest at six percent per annum on the unpaid taxes from the date said taxes were due and owing until paid.

6. That criminal charges heretofore filed against petitioner should be pursued and prosecuted by the proper legal authorities, and the right to prosecute for criminal charges is not merged in the civil remedies hereinabove set

forth, pursuant to U.C.A., Section 68-3-4.

DATED this 16 day of January, 1977.

UTAH STATE TAX COMMISSION: